



KIRIBATI COUNTRY REPORT

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Kam na bane ni mauri!

We take pleasure in reporting to our colleagues from the region on legal developments in Kiribati over the last year.

Commission of Inquiry

Allegations of Ministerial interference in the purchase of a cargo vessel by the Government-owned shipping company led to the establishment of a Commission of Inquiry. The Commission's report has been delivered to the Beretitenti (President), but has not yet been made public. The Minister in question resigned his portfolio. The incident resulted in wide-ranging public discussions on the role of State-owned enterprises and the level of Government involvement in their day-to-day operations.

Maritime boundaries

With the assistance of the South Pacific Applied Geoscience Commission (SOPAC), considerable work has been undertaken during the year on preparations for identifying Kiribati's maritime boundaries. Kiribati has the largest exclusive economic zone (EEZ) of any Pacific island country – over 3.5 million square kilometres – and accurate delimitation of our maritime boundary is of huge importance, particularly in relation to effective management of our marine resources. We hope to be in a position to begin negotiations with our neighbours (Tuvalu, Nauru, Marshall Islands, Cook Islands, New Zealand (for Tokelau) and the United States) within the next year or so.

New legislation

Two Bills to reform the legislative structure of the Kiribati Police Service (KPS) were introduced into the Maneaba ni Maungatabu (Parliament) during its session in July this year. The *Police Service Bill* and the *Police Powers and Duties Bill* are expected to be passed by the Maneaba during its session scheduled to begin on 9 December. These Bills, drafted with financial assistance from the Government of Australia, aim to give the KPS a foundation better-suited to a modern Police service in a small island country. The *Police Service Bill*, which will replace the 1965 *Police Ordinance*, will provide the structure for the KPS, together with a more appropriate framework for maintaining discipline. The *Police Powers and Duties Bill* aims to give Police officers a readily-accessible 'back pocket' resource, where all relevant Police powers and responsibilities can be found in a single document. It is hoped that this legislation might serve as a model for legislative reform in other small island countries.

Other Bills scheduled for final reading at the next session of the Maneaba include the *Anti-Personnel Mines (Prohibition) Bill 2008* and the *Measures to Combat Terrorism and Transnational Organised Crime (Amendment) Bill 2008*. The first of these will implement our legislative obligations under the Mine Ban Treaty, while the second amends our counter-terrorism legislation to take account of recent developments (including Kiribati's ratification of the Nuclear Terrorism Convention in September).

The *Insurance (Amendment) Act* 2008 (passed in July) removed the statutory monopoly granted to the Kiribati Insurance Corporation (a State-owned enterprise) in 1980. Preparations are now underway to implement a new regulatory regime for the insurance and finance sectors.

An important Bill scheduled to go before the Maneaba for first reading at its next session is the *Constitution (Amendment) Bill* 2008, which will introduce several constitutional amendments. If passed (which requires the support of two-thirds of the Maneaba) an additional Cabinet position will be created, in order to accommodate the Government's pledge to create a new Ministry for women's affairs. The Bill also seeks to remove a discriminatory provision, whereby an expatriate woman married to an I-Kiribati man becomes entitled by that marriage to register as a citizen of Kiribati. This entitlement is not available to expatriate men. If the amendment passes, nationals of other countries seeking Kiribati citizenship will be required to follow the same procedure, regardless of sex.

Work continues on a Leadership Code, and it is hoped that a Bill will be introduced into the Maneaba next year.

The most significant piece of subsidiary legislation adopted during the year was the *Phoenix Islands Protected Area Regulations* 2008. Adoption of these regulations (made under the *Environment Act* 1999) created the largest marine protected area in the world (over 410,000 square kilometres). Work is ongoing to develop a management plan for the protected area, together with the setting up of an endowment fund, which will provide financial resources for the sustainable management of the area. It is likely that a submission will be made in the near future to have the protected area declared a World Heritage Area.

Cases of interest

Republic *v.* Aekaua Kaata & Koaa Binokatau

This case saw the first prosecution under the *Proceeds of Crime Act* 2003, following amendments passed in 2005 to make the failure to declare possession of sums in excess of A\$5000 when entering or departing Kiribati an offence. The two accused, both seafarers, were apprehended at the airport in August, and were found to be in possession of approximately A\$6550 and A\$8000 respectively, which they had failed to declare. Both accused pleaded guilty and were fined \$500 each. In addition, the High Court ordered that the money seized from each accused be forfeited to the Republic, the first time a forfeiture order has been made.

Teiraoi Tetabea & Nakarua Eritai *v.* Attorney-General

Following amendments to the *Local Government Act* 1984 passed in 2006, the Minister for Internal and Social Affairs ordered the dissolution of all local government councils in Kiribati with effect from 1 August. The amendments were intended to introduce four-yearly elections for the Councils (as opposed to annual elections for

one-quarter of the Councillors). The Applicants (who had been Councillors prior to the dissolution) asked that the Minister's order be quashed or, in lieu thereof, that they be awarded damages for the premature dissolution of the Council. Their application to quash the Minister's order was dismissed, with the Chief Justice saying that Parliament's intention was clear. The damages claim failed as well. There remain to be heard a number of cases brought by some who had sought to stand for election to the Betio Town Council, but who were disqualified for failure to comply with procedural requirements.

During the past year the Chief Justice has stayed several criminal cases, on the basis of unacceptable delay. The most recent of these stays was granted in a case where less than 14 months had passed between the alleged commission of the offence and filing of an indictment. We are concerned that a significant number of accused persons have walked free on this basis. We are presently considering an appeal to the Court of Appeal, to seek a conclusive ruling on these matters. We are also undertaking several initiatives to improve our capacity to file indictments in a timely manner.

Other matters of interest

Kiribati Law Society

The inaugural general meeting of the Kiribati Law Society was held in March, at which time an executive was elected. Their first task is to draft the Rules of the Society, together with a Code of Conduct. Once the drafting work is complete, a further general meeting will be convened to adopt the Rules and the Code.

The sinking of the *Sokalique*

You may recall that our country report from last year mentioned the matter of the *Sokalique*, a French fishing vessel involved in a collision with the Kiribati-flagged *Ocean Jasper* in the English Channel in August 2007. Last year we said:

The *Ocean Jasper* failed to stop and render assistance, as required by Kiribati law. The collision occurred in international waters and, under the *Law of the Sea Convention*, responsibility for prosecution for any offence occurring onboard the *Ocean Jasper* falls to Kiribati (as the flag-State). The French government has taken a keen interest in this case, with President Sarkozy attending the fisherman's funeral. Following negotiations at the highest levels, France and Kiribati have recently agreed that the trial of the captain of the *Ocean Jasper* should take place in France, but under Kiribati law (as much as is possible). There are serious matters of sovereignty at issue here and the decision for Kiribati and France to co-operate in this manner is, as far as we can tell, without precedent. We take the view that those on board Kiribati-flagged vessels, wherever in the world they may be, should not think that they can act with impunity. This is a very complex matter, and there is still much to be sorted out, particularly as regards the application of Kiribati law in the French courts.

We promised to provide an update, however there has been little progress, with all persons of interest presently in Azerbaijan, beyond the reach of the French courts. The French and Azeri governments are currently in negotiations, with a view to

allowing the Investigating Magistrate to travel to Azerbaijan to interview the Captain and First Officer of the *Ocean Jasper*. It is possible that the Turkish owner of the vessel may face charges as well. The vessel herself remains in the French port of Brest, awaiting the outcome of several civil actions.

The hijack of the *Ekawat Nava 5*

In another incident involving a Kiribati-flagged vessel, on 18 November the fishing trawler *Ekawat Nava 5*, owned by Thai interests, was hijacked by Somali pirates in the Gulf of Aden (between Somalia and Yemen). There were 16 crew on board (15 Thai nationals and one Cambodian). Later that day, it appears that the *Ekawat Nava 5* was fired upon by an Indian naval vessel, acting in response to shots fired by pirates from the fishing vessel. The trawler sank, with the loss of all but one of the crew (who was rescued six days later). At this stage we are still awaiting an official report from the Indian government. This incident is an unfortunate consequence of the significant increase in attacks by Somali pirates over the past year.

PILON Litigation Skills Programme

Kiribati was fortunate to have six participants in the recently-concluded PILON Litigation Skills Programme (three lawyers from the Office of the Attorney-General, one lawyer from the Office of the People's Lawyer, and two Police officers). The Solicitor-General also contributed as a member of the faculty. The opportunity to participate was greatly appreciated, and the Programme is considered to be a very positive demonstration of what might be achieved under the auspices of PILON. A big kaaitau goes to the New Zealand government for funding the Programme, and it is hoped that further such opportunities might be made available in the future.